

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ESTATE OF MICHAEL TRISTIAN :

PAONE, deceased, by and through the :

Administrators of the Estate, MICHAEL :

PAONE, JR. and LISA PAONE; LISA :

PAONE, individually; and JULIANA :

PAONE, individually, :

Plaintiffs, :

v. :

PLYMOUTH TOWNSHIP and :

PLYMOUTH TOWNSHIP POLICE :

OFFICERS DOES 1-10, :

Defendants. :

CIVIL ACTION

No. 22-2178

ORDER

AND NOW, on this **5th** day of **December 2022**, upon consideration of Defendant Plymouth Township's Motion to Dismiss Plaintiffs' Amended Complaint in Part (ECF 9), the Response in Opposition by Plaintiffs, the Estate of Michael Tristian Paone, deceased, by and through the Administrators of the estate, Michael Paone Jr. and Lisa Paone; Lisa Paone, individually; and Juliana Paone, individually (ECF 10), and the Township's Response in Support of its Motion (ECF 11), and consistent with the accompanying Memorandum of Law, it is **ORDERED** that the motion to dismiss is **GRANTED** and:

1. Plaintiffs' section 1983 claims against the Township (Counts I, II, III, V and VI) are **DISMISSED**. Plaintiffs may amend their section 1983 excessive force claim against the Township if they can allege sufficient facts to state a basis for *Monell* liability;
2. Plaintiffs' claims against the Township for a conspiracy to interfere with civil rights pursuant to 42 U.S.C. § 1985(3) (Count IV) and for neglect pursuant to

42 U.S.C. § 1986 (Count VII) are **DISMISSED** with leave to amend to the extent that Plaintiffs can allege sufficient facts to state a plausible claim for relief;

3. Plaintiffs' state law claims against the Township for survival (Count VIII), and wrongful death (Count IX), assault and battery (Count X), negligent infliction of emotional distress (Count XII), and intentional infliction of emotional distress (Count XIII) are **DISMISSED** with prejudice.
4. Plaintiffs may file a Second Amended Complaint consistent with this Order and the accompanying Memorandum, if any, or notify the Court that they will proceed on their remaining claims **on or before Tuesday, December 27, 2022**.

It is **FURTHER ORDERED** that, because Plaintiffs filed an Amended Complaint (ECF 8), the Motion to Dismiss filed at ECF 5 is **DISMISSED as MOOT**.

BY THE COURT:

A handwritten signature in blue ink, appearing to read 'Berle M. Schiller', is written over a horizontal line.

Berle M. Schiller, J.